



SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY - CIVIL TERM - PART 27

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DR. MAC TRUONG,

PLAINTIFF,

-against-

CHARLES SCHWAB MEMBER: SIPC, N.Y.  
STOCK EXCHANGE,

DEFENDANT.

-----X

CHARLES SCHWAB & CO., INC.,

Defendant and Third Party

Interpleading Plaintiff,

-against-

TRAN DINH TRUONG, VISHIPCO LINES and  
DAI NAM HANG HAI CONGTY VISHIPCO LINE  
OF VIETNAM,

Third Party Interpleaded  
Defendants.

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Index No. 604650/97

60 Centre Street

MOTION

New York, New York

August 16, 2007

B E F O R E: HONORABLE IRA GAMMERMAN, Judicial Hearing  
Officer.

A P P E A R A N C E S:

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MICHAEL J. DAUGENTI, CSR, RPR, RMR, CRR  
OFFICIAL COURT REPORTER

Proceedings

1  
2 THE COURT: This case is 7084. I thought I  
3 put this case to bed in September of 2002. This is a  
4 case in which some money was collected presumably by  
5 the plaintiff in connection with monies due some  
6 Vietnamese shipping lines and an account was opened at  
7 Schwab and there was a dispute as to who was entitled  
8 to the money.

9 Judge Cozer decided, when he had this case  
10 before I did, I guess it was transferred to me at some  
11 point --

12 MR. BROOKS: He went up to the second  
13 department.

14 THE COURT: -- that the money, in any  
15 event, irrespective of who was entitled to it, the  
16 plaintiff was not, based on a breach of fiduciary  
17 duty.

18 There was then a dispute between a lawyer  
19 who claimed to represent the government of Vietnam and  
20 I guess the owners of the shipping lines concerning  
21 the right to the money. And I eventually dismissed  
22 any claim by the Government of Vietnam based on the  
23 failure of the Government, the Government of Vietnam,  
24 to produce any of the documents requested or to  
25 produce anybody for a deposition.

26 And now as I understand it all the money

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2 has now been turned over to Mr. Levy's client. Is  
3 that correct?

4 MR. LEVY: That's correct.

5 MR. TRUONG: That's not the point, your  
6 Honor.

7 THE COURT: Stop talking.

8 MR. TRUONG: I would object and withdraw my  
9 consent to --

10 THE COURT: Stop talking.

11 MR. TRUONG: I will object to have consent  
12 to have the judge --

13 THE COURT: Stop talking. Stop talking.

14 MR. TRUONG: Your Honor, you don't ever let  
15 me talk when it's my motion.

16 THE COURT: Stop talking.

17 MR. TRUONG: I can't even present my views.  
18 You let him talk.

19 THE COURT: Mr. Truong, if you don't stop  
20 talking I'll deny your motion and that will be the end  
21 of it and goodbye.

22 Do you want to make a record?

23 MR. TRUONG: Your Honor, do you --

24 THE COURT: If you don't stop talking, the  
25 motion is denied. Now stop talking.

26 MR. TRUONG: I would like now to move the

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2 court to withdraw my consent to have the judgment.

3 THE COURT: Too late. Once you're married  
4 to me you're married to me.

5 Is there any money still on deposit?

6 MR. TRUONG: I will -- would you give that  
7 to me --

8 THE COURT: There is no money on deposit?

9 MR. BROOKS: That's what happened. After  
10 September 2002, when you ordered my partner Eamonn  
11 Foley to pay all the money -- and Judge Cozer said all  
12 the money will be paid at the time -- we didn't pay it  
13 for six months. Here's why.

14 THE COURT: I just want to know if it's  
15 been paid.

16 MR. BROOKS: It has all been paid, but it  
17 was held up by him, by the bankruptcy, Judge Dankfer  
18 was here representing -- you held him in contempt.  
19 First he had stolen some of the money out. That's  
20 what happened in 2003.

21 Finally when all that was resolved, yes, we  
22 paid all the money, every penny.

23 MR. TRUONG: I cannot stand that, Judge.  
24 Can I have five minutes to speak my version, your  
25 Honor?

26 THE COURT: All the money's been turned

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2 over. What are you seeking, Mr. Truong?

3 MR. TRUONG: What I'm seeking is this, your  
4 Honor. I don't contest. If that's the case, even my  
5 commission is gone. Even my -- let's say all the  
6 money I earned on behalf of Vishipco is gone because  
7 of Judge Cozer's decision, which is not correct. So,  
8 even if it so, it's come out to \$550,000 in total,  
9 your Honor.

10 Now, because of that, they mess up the  
11 whole thing by saying that even my IRA account, which  
12 has absolutely nothing to do with the Vishipco money  
13 that I own and that is \$450,000 in my account. They  
14 take it out and give it to --

15 THE COURT: What you're saying is that you  
16 had your own money unrelated to any money you  
17 collected for these steamship lines.

18 MR. TRUONG: Or my commissions.

19 THE COURT: Stop talking.

20 Any money -- any unrelated money that you  
21 collected for these steamship lines, on deposit with  
22 Charles Schwab.

23 MR. TRUONG: Yes.

24 THE COURT: And that money has also been  
25 turned over to the owners of the steamship lines;  
26 correct? Is that correct?

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MR. TRUONG: Yes, correct.

MR. BROOKS: And, your Honor --

THE COURT: Just stop talking.

MR. TRUONG: One more thing.

THE COURT: Stop talking. Just a minute.  
Now I understand your claim.

MR. BROOKS: His client, Mr. Hershkowitz, if you look at that transcript you were just looking at, on September 25th made the same arguments here. He said you can't turn over his money, that's his personal money, and you told us to do it. And not only that, Judge Cozer said all the interpleaded accounts, his daughter's, his son's, his IRA, all of those accounts were traceable to the original recovery.

MR. TRUONG: That is a lie, your Honor.

THE COURT: Just a minute.

Dr. Truong, it's now 2007. The money was turned over, as I understand, sometime in late 2002 or early 2003.

MR. BROOKS: March 2003.

THE COURT: What happened between March of 2003 and now, August of 2000?

MR. BROOKS: He brought seven frivolous federal lawsuits against us for the same relief.

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2 THE COURT: I'm asking him.

3 What happened between March of 2003 and  
4 August of 2007 with respect to this claim?

5 MR. TRUONG: Yes, your Honor. First, even  
6 if it's true, I still have six years of statute of  
7 limitations for my account.

8 THE COURT: My suggestion is you start a  
9 lawsuit against --

10 MR. BROOKS: He's withdrawing.

11 THE COURT: Don't interrupt, please.

12 MR. BROOKS: I'm sorry.

13 THE COURT: My suggestion is, if you  
14 maintain that Schwab improperly turned over money that  
15 belonged to you unrelated to any of the monies that  
16 you collected in connection with this claim of these  
17 shipping lines, you start a lawsuit against Schwab in  
18 an appropriate court and that issue can be litigated.

19 MR. TRUONG: Thank you very much, your  
20 Honor.

21 THE COURT: But it's not going to be  
22 litigated within the framework of this lawsuit.

23 MR. TRUONG: Then it's okay, your Honor.

24 MR. BROOKS: No, it's not. He's been  
25 enjoined by Judge Sidney Stein.

26 MR. TRUONG: He's lying.



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2 THE COURT: That's not --

3 MR. BROOKS: At some point this has to come  
4 to an end, your Honor.

5 MR. TRUONG: That's unfair, your Honor.

6 THE COURT: That's it. You tell me what's  
7 happened in the four years between.

8 MR. BROOKS: Right after you ordered us to  
9 pay the money, he brought six lawsuits in the Southern  
10 District against Schwab, against my old law firm my  
11 old partner, Eamonn Foley, in the Southern District  
12 for the very same thing he's claiming now.

13 It took years. We got them dismissed,  
14 Judge Stein dismissed them, sanctioned him under 28  
15 USC 1927, enjoined him from ever suing Schwab or its  
16 lawyers again. He also sued us in federal court in  
17 New Jersey --

18 MR. TRUONG: Your Honor --

19 THE COURT: I'll let you talk in a minute.

20 MR. BROOKS: I'm not finished.

21 We had to have that moved, transferred here  
22 to the Southern District. By the way, he sued Judge  
23 Cozer, he sued Judge Tompkins, He sued --

24 THE COURT: He hasn't sued me yet.

25 MR. BROOKS: -- every judge on the  
26 Appellate Division who disbarred him. This has to

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2 come to an end. This can't go on. You shouldn't give  
3 him ideas to file yet another frivolous lawsuit.

4 THE COURT: I didn't realize he was  
5 enjoined by Judge Stein.

6 MR. BROOKS: The judge dismissed his claim  
7 on res adjudicata. That's why he's back here now.  
8 All the federal courts, it's been litigated here. Now  
9 he's going to say you invited him to bring other  
10 lawsuit. This is ridiculous.

11 MR. TRUONG: Judge Stein only listened to  
12 him and misinterpreted your order by saying that  
13 interpleaded assets is everything. It is not  
14 everything because actually I have got Mr. Foley's  
15 papers itself, that I submitted in my motion showing  
16 that my IRA account has absolutely nothing to do with  
17 the money. That's a half million dollars, your Honor.

18 Now you can see, I'm almost as old as you  
19 are and I need my money. If you say I have to make it  
20 A separate action, then that's what I will do.

21 THE COURT: Counselor, Dr. Truong, I'm not  
22 certainly overruling Judge Stein. Judge Stein has  
23 enjoined you from starting an action against Schwab.  
24 You're enjoined from starting an action against  
25 Schwab. You have to get the relief from Judge Stein.

26 MR. TRUONG: Yes, your Honor. If you are

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2 neutral on that, that's all right with me, your Honor.

3 THE COURT: Anybody else would like to say  
4 anything?

5 MR. BROOKS: I would like you to enjoin him  
6 from coming back on this case on this index number.

7 THE COURT: He can't do it anymore.

8 MR. BROOKS: I would like you to order him  
9 not to.

10 THE COURT: It seems to me, Dr. Truong,  
11 that this case is over. And if you're going to get  
12 relief -- and I suspect you're not going to get relief  
13 because you've been enjoined by Judge Stein.

14 MR. TRUONG: That's not so, because it's on  
15 appeal --

16 THE COURT: That's something you and Judge  
17 Stein are going to have to work out. In any event,  
18 this motion is denied.

19 Anybody want to say anything else?

20 MR. LEVY: I join in Mr. Brooks'  
21 application for something a little bit more than just  
22 denial of Mr. Truong's motion. You know, when we left  
23 your courthouse it's not like he just ran back to his  
24 office and instructed his client to wire the money to  
25 my clients.

26 We went through a process whereby counsel

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1  
2 went to the bankruptcy court to make sure that there  
3 was no impingement on any sort of bankruptcy stay.  
4 This was done very methodically. Mr. Truong has had  
5 several opportunities to appeal.

6 THE COURT: Wasn't there an accounting  
7 here?

8 MR. TRUONG: That's the point, your Honor.

9 THE COURT: Just a second. My notes  
10 indicated that Judge Cozer directed an accounting.

11 MR. LEVY: The accounting was a cause of  
12 action that my clients brought against the fiduciary.  
13 Mr. Truong believes that that was Judge Cozer's  
14 invitation to see how much he's owed. In fact, if you  
15 look at Judge Cozer's decision, you'll see the action  
16 for the accounting was granted to the extent of  
17 requiring Dr. Truong to account for every nickel.

18 THE COURT: What happened?

19 MR. LEVY: It was stayed because of his  
20 bankruptcy and eventually we withdrew that claim when  
21 you dismissed it.

22 MR. TRUONG: Therefore, it would still only  
23 be the figure that Judge Cozer --

24 THE COURT: In any event, this motion is  
25 denied for the reasons indicated on the record.

26 Thank you all very much.

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MR. TRUONG: Thank you very much, your  
Honor.

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C E R T I F I C A T E

It is hereby certified that the foregoing is a true and  
accurate transcript of the proceedings.

*Michael J. Daugenti*  
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OFFICIAL COURT REPORTER  
SUPREME COURT-NEW YORK COUNTY